

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

vs.

E.I. DUPONT DE NEMOURS AND
COMPANY and
PIONEER HI-BRED INTERNATIONAL,
INC.,

Defendants.

Case No. 4:09-cv-00686-ERW

MOTION FOR EXTENSION OF TIME

Plaintiffs Monsanto Company and Monsanto Technology LLC (collectively “Monsanto”), pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and Eastern District of Missouri Local Rule 6 – 1.05, hereby move for an extension of time to respond to Defendants’ Second Amended Answer and Counterclaims (“SAAC”) (Dckt. #316). The current deadline for Monsanto to file a response is Friday, September 10, 2010. Contemporaneously with this motion, Monsanto files a Motion to Dismiss Certain Antitrust, Patent, and Contract Counterclaims and/or to Strike Certain Patent and Contract Affirmative Defenses. Monsanto’s motion to dismiss responds to many, but not all, of the counterclaims and affirmative defenses in Defendants’ SAAC. Accordingly, Monsanto requests an extension of the deadline to file a response to Defendants’ remaining counterclaims until 14 days after notice of the Court’s action regarding Monsanto’s Motion to Dismiss.

Federal Rule of Procedure 12(a)(4) provides that service of a motion under Rule 12 alters the time for a party to file a responsive pleading. After filing a Rule 12 motion, the moving party must serve a responsive pleading within 14 days after notice of the court's action. FED. R. CIV.

P. 12(a)(4). Monsanto's request for an extension of time conforms with federal case law holding that filing a Rule 12 motion enlarges the time for a responsive pleading to all claims, including those not addressed in that motion. Ideal Instruments, Inc. v. Rivard Instruments, Inc., 434 F. Supp. 2d 598, 637-40 (N.D. Iowa 2006). Accord, Godlewski v. Affiliated Computer Servs., Inc., 210 F.R.D. 571, 572 (E.D. Va. 2002); Tingley Sys., Inc. v. CSC Consulting, Inc., 152 F. Supp. 2d 95, 122 (D. Mass. 2001); Finnegan v. Univ. of Rochester Med. Ctr., 180 F.R.D. 247, 249-50 (W.D.N.Y. 1998); Oil Express Nat'l, Inc. v. D'Alessandro, 173 F.R.D. 219, 220-21 (N.D. Ill. 1997); Ricciuti v. New York Transit Auth., No. 1:90cv02823, 1991 WL 221110, at *2 (S.D.N.Y. Oct. 1, 1991); 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1346 (3d ed. 2004). A cautious party that files a partial Rule 12 motion may obtain an extension of time to respond to the remaining counts. See D'Alessandro, 173 F.R.D. at 221. Therefore, Monsanto respectfully requests that the time for filing its responsive pleading as to Defendants' remaining counterclaims be extended until after the Court rules upon Monsanto's motion to dismiss.

Dated: September 10, 2010

Respectfully submitted,

HUSCH BLACKWELL SANDERS LLP

By: /s/ Joseph P. Conran.
Joseph P. Conran, E.D.Mo. # 6455
joe.conran@huschblackwell.com
Omri E. Praiss, E.D.Mo. # 35002
omri.praiss@huschblackwell.com
Greg G. Gutzler, E.D.Mo. # 84923
greg.gutzler@huschblackwell.com
Tamara M. Spicer, E.D.Mo. # 122214
tamara.spicer@huschblackwell.com
Steven M. Berezney, E.D.Mo. # 499707
steve.berezney@huschblackwell.com
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
(314) 480-1500 – telephone
(314) 480-1505 – facsimile

WINSTON & STRAWN LLP
Dan K. Webb
dwebb@winston.com
George C. Lombardi
glombardi@winston.com
Todd J. Ehlman
tehlman@winston.com
James M. Hilmert
jhilmert@winston.com
35 W. Wacker Drive, Suite 4200
Chicago, IL 60601
(312) 558-5600 – telephone
(312) 558-5700 – facsimile

John J. Rosenthal
jrosenthal@winston.com
Matthew A. Campbell
macampbell@winston.com
Jovial Wong
jwong@winston.com
1700 K Street, N.W.
Washington, DC 20006
(202) 282-5000 – telephone
(202) 282-5100 – facsimile

Gail J. Standish
gstandish@winston.com
333 South Grand Avenue
Los Angeles, CA 90071-1543
(213) 615-1700 – telephone
(213) 615-1750 – facsimile

MCDERMOTT WILL & EMERY
Steven G. Spears
sspears@mwe.com
Scott W. Clark
sclark@mwe.com
1000 Louisiana Street, Suite 3900
Houston, TX 77002-5005
(713) 653-1700 – telephone
(713) 739-7592 – facsimile

COVINGTON & BURLING LLP
Kurt G. Calia
kcalia@cov.com
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
(202) 662-6000 – telephone
(202) 662-6291 – facsimile

ARNOLD & PORTER LLP
Anthony J. Franze
anthony.franze@aporter.com
555 Twelfth Street, N.W.
Washington, DC 20004
(202) 942-5000 – telephone
(202) 942-5999 – facsimile

*Attorneys for Plaintiff Monsanto Company and
Monsanto Technology LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of September, 2010, the foregoing was filed electronically with the Clerk of the Court for the United States District Court for the Eastern District of Missouri, Eastern Division, and was served by operation of that Court's electronic filing system, upon the following:

Andrew Rothschild, Esq.
C. David Goerisch, Esq.
Lewis, Rice & Fingersh, L.C.
600 Washington, Suite 2500
St. Louis, MO 63102

Leora Ben-Ami, Esq.
Thomas F. Fleming, Esq.
Christopher T. Jagoe, Esq.
Howard S. Suh, Esq.
Jeanna Wacker, Esq.
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

Donald L. Flexner, Esq.
Hershel Wancjer, Esq.
Cynthia Christian, Esq.
Robert M. Cooper, Esq.
Boies, Schiller & Flexner LLP
575 Lexington Avenue, 7th Fl.
New York, NY 10022

James P. Denvir, Esq.
Amy J. Mauser, Esq.
Boies, Schiller & Flexner LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015

Attorneys for Defendants

/s/ Joseph P. Conran .